IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 35460 of 2005(U)

PETITIONER: APPELLANT

GEETHA LAKSHMI K
"VIDHA VIHAR" HOUSE NO.6
KALLEKULANGARA,PALAKKAD-9.

BY ADV. SRI.C.VALSALAN
SRI.GHOSH YOHANNAN
SRI.K.RAKESH ROSHAN

RESPONDENTS:

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1. STATE OF KERALA,REP.BY SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT SECRETARIATE
THIRUVANANTHAPURAM.

2. DISTRICT OFFICER,KERALA PUBLIC SERVICE
COMMISSION,KOZHIKODE DISTRICT OFFICE.

3. KERALA PUBLIC SERVICE COMMISSION
PATTOM,ATHIRUVANANTHAPURAM,REPRESENTED
BY IT'S SECRETARY.

4. MANIYUR GRAMA PANCHAYAT REP.BY ITS
SECRETARY, MANIYUR P.O.,
KOZHIKODE DISTRICT.

5. HEADMASTER,MANIYUR PANACHAYAT
SECONDARY SCHOOL,PALAYADNADA P.O.,
IRINGAL (VIA),
KOZHIKODE DISTRICT.

ADDL.R6 IMPLEADED:

R6. MANOHARAN.P.P., KILIAMPARATH HOUSE, KINALUR.P.O.,
(VIA) BALUSSERI, KOZHIKODE DISTRICT.

IMPLEADED AS PER ORDER ON IA.9712/06 DT. 13/7/2006.

BY ADV. SRI.P.V.KUNHIKRISHNAN
GOVT.PLEADER SMT.BINDU.
S.C FOR PSC SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.35460/2005)

EXT.P1: COPY OF ORDER DT. 15/12/2004.

EXT.P2: COPY OF ORDER DT. 12/1/2005.

EXT.P3; COPY OF JOINING LETTER DT. 24/1/2005.

EXT.P4: COPY OF N OTIDCE DT. 30/8/2005.

EXT.P5: COPY OF REPLY TO EXT.P4

EXT.P6: COPY OF LETTER DT. 17/11/2005.

EXT.P7: COPY OF ORDER DT. 1/12/2005.

EXT.P8: COPY OF JUDGMENT IN WP.33275/2005.

RESPONDENTS' EXHIBITS:

EXT.R6(A): COPY OF LETTER DT, 9/5/2005. OF KPSC.

EXT.R6(B): COPY FO ADVICE DT. 15/12/2005.

A.K. Basheer, J.

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W.P(C) No. 35460 of 2005

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Dated this the 22nd day of November, 2006.

J U D G M E N T

Is the Kerala Public Service Commission justified in cancelling the advice for appointment issued in favour of the petitioner to the post of HSA (Physical Science)?

2. A brief reference to the relevant facts is necessary to consider the above question.

3. Petitioner was admittedly placed at rank No.18 in the ranked list published by the Commission on March 28, 2001 for appointment to the post of High School Assistant (Physical Science). Petitioner belongs to Ezhava community (Thiyya). It is not in dispute that the appointing authority had reported one vacancy to the Commission on March 27, 2004 on the eve of expiry of the list .

4. According to the petitioner on September 14, 2004, the Commission had published a notice in all leading Malayalam newspapers inviting response from the candidates included in the list as to whether any one of them was willing to be appointed in Panchayat High schools. Petitioner contends that she gave her consent in response to the above notification.

5. Thereafter by Ext.P1 communication dated December 15, 2004 petitioner was informed by the District Officer of the Commission at Kozhikode that she had been selected for appointment as HSA (Physical Science) in Maniyur Grama

Panchayat school. Shortly thereafter petitioner received Ext.P2 order of appointment dated January 12, 2005 from the Secretary of Maniyur Grama Panchayat. Petitioner joined the school on January 24, 2005.

6. While so, petitioner was served with Ext.P4 show cause notice dated August 30, 2005 from the Commission directing her to show cause why the appointment given to her should not be cancelled, since it had been noticed that there was some irregularity in the procedure adopted by the Commission, while seeking option from the candidates in the list for appointment in the Panchayat school. Though petitioner submitted Ext.P5 reply in response to the above show cause notice, the Commission did not accept it. Thereafter Ext.P6 order was issued by the Commission on November 17, 2005 cancelling the advice for appointment issued in favour of the petitioner. Consequently the Secretary of the Panchayat who is the Manager of the school issued Ext.P7 terminating the services of the petitioner with effect from December 1,2005. Petitioner has challenged Exts.P4,P6 and P7 in this writ petition and prayed for issuance of a writ of certiorari to quash them. There is a further prayer for a declaration that she is entitled to get re-appointment in the school as a Rule 51A claimant.

7. Petitioner has been continuing in service albeit without salary on the strength of the interim order issued by this Court at the time when the writ petition was admitted.

8. In the counter affidavit it is pointed out by the Commission that its District office had committed procedural irregularity in advising appointment of the petitioner. This irregularity was noticed in a routine review of the functioning of the District Offices of the

Commission. Such review inspection is held by the Inspection Wing of Commission once in every 6 months. The inspection Wing is headed by the seniormost Joint Secretary of the office of the Commission. On such an inspection conducted in the month of February 2005 it was noticed that the District Officer, Kozhikode had issued a notification in newspapers dated September 14, 2005 directing the candidates included in the ranked list for the post of HSA (Physical Science) to indicate their willingness for appointment in Panchayat school before September 30, 2004. Only the petitioner and another candidate who was placed in the supplementary list (Ezhava) responded to the above paper notification. Thereafter the District Officer of the Commission had issued Ext.P1 advice for appointment, to the petitioner on December 15, 2000.

9. The Inspection Wing found that the above procedure was wrong. Therefore individual notices had to be issued to the remaining candidates in the list requesting for their response as to whether they were willing to be appointed in a Panchayat school against the vacancy reported to the Commission. Accordingly individual notices were issued. Respondent No.6 who was placed at rank No.42 in the main list gave his willingness in response to the notice. He was found eligible. Therefore the Commission decided to advice the said candidate for the post. It was in the above circumstances that the Commission had issued show cause notice to the petitioner. Later her advice was cancelled after considering her response to the show cause notice. The specific contention of the Commission is that its action is perfectly legal and valid, in the facts and circumstances of the case,

particularly in view of the provisions contained in Rule 3(c) of the Kerala State & Subordinate Service Rules.

10. Having heard learned counsel for the parties and having perused the materials on record, I do not find any illegality or irregularity in the action taken by the Commission in cancelling the advice for appointment. The action of the Panchayat in terminating the service of the petitioner cannot also be faulted for the reason that will be stated hereunder a little later.

11. That the advice for appointment of the petitioner was made in terms of Rule 3(c) and 10(b) of the KS & SSR is not disputed by the petitioner. It is evident from Ext.P1 Advice memo and Ext.P2 order of appointment also. These documents show that petitioner's appointment was under Rule 3(i) of the General Rules of the KS & SSR. Though the petitioner does not have a case that the action of the Commission or the appointing authority is bad because of infraction of any Rule, it is contended by her that she had bonafide believed that her advice and appointment were perfectly legal and valid, since she had responded to a notification published in the newspapers. She believed that she was advised for appointment since her turn had come.

12. The above contentions raised by the petitioner are mostly grounded on compassion and sympathy. Petitioner submits that she has 2 small children and an ailing father. However the materials on record undoubtedly indicate that petitioner was the beneficiary of an illegal and irregular action of the District Office of the Commission. The said action cannot be justified or sustained. Therefore the contentions raised by the petitioner are repelled. It is held that Exts.P4, P6 and P7 are

perfectly legal and valid and the petitioner is liable to be terminated from service.

13. As regards the irregularity and illegality committed by the District Office of the Commission, it is pertinent to note that Ext.P1 order itself is telltale as to how somebody in the office of the Commission at Kozhikode had perpetrated the above mischief and illegality. It is seen that Ext.P1 was signed by somebody for the District Officer. It has to be found out as to who was the officer responsible for this mischief. It is true that in the counter affidavit it is stated that orders have been issued to initiate action against the officers who were responsible for this illegal act. The Commission shall ensure that the culprits are brought to book and appropriate action is taken against them forthwith. An action taken report shall be submitted before the Registry of this Court within two months from the date of receipt of a copy of this judgment.

Writ Petition is dismissed with the above directions.

A.K. Basheer
Judge.

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